

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.02.2022

PRONOUNCED ON : 15.06.2022

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A.NO.3159 OF 2012

AND

M.P.NO.1 OF 2012

National Insurance Company Ltd.,
740 Paramathi Road,
Namakkal.

... Appellant/2nd Respondent

Vs.

1. S.Mangaleswaran

... 1st Respondent/Petitioner

2. A.Yogaraja

... 2nd Respondent/1st Respondent

3. Ramar

... 3rd Respondent/3rd Respondent

4. United India Insurance Co.Ltd.,
Periakulam Road,
Theni.

... 4th Respondent/4th Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 27.06.2007 made in M.A.C.T.O.P.No.1323/2003 on the file of the Motor Accidents Claims Tribunal Salem (Additional District Judge, Fast Track Court No.1 Salem).

For Appellant : Mr.S.Vadivel
For Respondents : No appearance for R1 to R3
M/s.I.Malar for R4

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the liability fixed on the appellant/Insurance Company by award dated 27.06.2007 made in

M.A.C.T.O.P.No.1323/2003 on the file of the Motor Accident Claims Tribunal Salem (Additional District Judge, Fast Track Court No.1 Salem).

2. The claimant/1st respondent has filed a claim petition in M.A.C.T.O.P.No.1323/2003 on the file of the Motor Accident Claims Tribunal Salem, claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the road accident which took place on 07.02.2003.

3. According to the first respondent/claimant, on 07.02.2003 at about 11.30 a.m., he travelled as pillion rider while his friend was riding Bajaj Pulsorn Motor cycle bearing registration No.TN-60-Y-1189 from Yercaud Main road to Salem near Senthil Complex, Chinnakollapatti. When the rider tried to overtake the bullock cart which went in front of the motorcycle, he applied sudden brake. Since the driver of the Maruti Zen car bearing Reg.No.TN-28-E-6339 came in a rash and negligent manner in the opposite direction of the motorcycle, the car dashed against the claimant. Due to the said accident, the claimant sustained injuries. Hence, the claimant has filed a claim petition, claiming a sum of Rs.3,00,000/- as compensation before the Motor Accident Claims Tribunal Salem (Additional District Judge, Fast Track Court No.1 Salem).

4. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident has happened due to the negligence of both the rider of the motorcycle and the driver of the car by head-on collision. The motorcycle was insured with the 4th respondent and the car was insured with the appellant-Insurance Company and therefore, the Tribunal has granted a sum of Rs.68,000/- as total compensation and directed both the Insurance companies to jointly and severally pay the compensation to the claimant.

5. The appellant/Insurance Company has come out with the present appeal on the ground that the Tribunal erred in fixing joint liability on the insurer or both vehicles to pay compensation, without considering Ex.P.1 - FIR, Ex.P.4- Charge sheet and Ex.P.5- Judgement rendered by the criminal court.

6. Heard the learned counsel for the appellant and the learned counsel appearing for the 4th respondent and perused all the materials available on record.

7. A perusal of the Award would go to show that the Tribunal after considering the material documents, testimony of witnesses, held that the accident occurred due to the negligence of both the rider of the motorcycle and the driver of the car.

The Tribunal has relied upon the dictum laid down in the case of Bijoy Kumar Dugar v. Bidyadhar Dutta and others reported in 2006(3) CTC 122 and observed the relevant portion of the said judgment which reads as follows:

"Contributory negligence when there is a head-on collision between two vehicles, drivers of both vehicles should be held responsible to have contributed equally to the accident".

Holding so, the tribunal directed that respondents 1 to 4 are jointly and severally liable to pay compensation which in the considered opinion of this court, does not require any interference.

8. As far as quantum of compensation is concerned, the Tribunal based on Ex.A3-Accident Register, Ex.A-6-Wound certificate, Ex.A7- Scan report, Ex.A.11 and Ex.A.12 - Discharge summary, Ex.A.13-Disability Certificate , granted Rs.40,000/- under the head "permanent disability", Rs.5000/- towards "Pain and suffering"; Rs.23,000/- for Medical Bills, altogether, Rs.68,000/- as compensation to the claimant, which is just and reasonable compensation.

9. In the light of the above reasonings, this court finds no error in the award passed in MACTOP.No.1323/2003. Accordingly, the appeal is dismissed and the compensation awarded by the Tribunal at Rs.68,000/- (Rupees sixty eight thousand only) along with interest and costs is confirmed. The appellant/Insurer of the Maruti car and the 4th respondent/Insurer of the Motorcycle are jointly and severally directed to deposit the award amount along with interests and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of this judgment to the credit of M.A.C.T.O.P.No.1323/2003. On such deposit, the claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The Award of the Tribunal remains unaltered in other respects. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msv/nvsri

To

The Additional District Judge,
Fast Track Court No.1
Motor Accidents Claims Tribunal,
Salem.

+1cc to M/s.S.Vadivel, Advocate, S.R.No.36315

C.M.A.No.3159 of 2012

PMK(CO)
RLP(11/07/2022)